

## MN PLANNING POLICY - THREATENED AND ENDANGERED SPECIES

### What is the role of NRCS with regard to the Endangered Species Act (ESA) and MN Endangered Species Statute?

NRCS procedures for implementing the ESA is contained in the General Manual 190, Part 410, as part of the NRCS procedures for compliance with the National Environmental Protection Act (NEPA) and related environmental concerns.

NRCS will assist in the conservation of threatened and endangered species and avoid or prevent activities detrimental to such species. NRCS' concern for these species includes the species listed by the Secretary of the Interior (as published in the Federal Register) and species designated by state agencies as threatened, endangered and special concern (MN Statutes, Section 84.0895 and MN Rules, Parts 6212.1800 to 6212.2300). All activities for which NRCS provides technical or financial assistance or authorization, leases, contracts, easements, etc., are subject to NRCS ESA policy.

The state conservationist has responsibility for ensuring that current lists of threatened and endangered species, along with related information, is provided to the NRCS field and field support offices.

### Purposes of the ESA?

The purposes of the ESA of 1973, as amended, are to provide a means whereby the ecosystems on which threatened and endangered species depend may be conserved and to provide a program for the conservation of such species.

Section 7 of the ESA mandates all Federal agencies to "utilize their authorities" to conserve endangered and threatened species, and requires that all Federal agencies consult with the U.S. Fish and Wildlife Service (USFWS) to ensure that actions that they fund, authorize, or carry out do not jeopardize endangered and threatened species or adversely modify their critical habitat.

### What are endangered and threatened species?

An endangered species is any species in danger of extinction throughout all, or a significant portion of its range.

A threatened species is any species likely to become an endangered species within the near future throughout all or a significant portion of its range.

### What are candidate and special concern species?

Federal candidate species are any species which, in the opinion of either the Secretary of the Interior or the Secretary of Commerce, qualify as either threatened or endangered but listing is precluded by other priorities. While there is no formal protection for these species, conservation of these species during planning can aid in their recovery or possibly avoid future listing.

State special concern species are extremely uncommon in Minnesota, or have unique or highly specific habitat requirements and deserve careful monitoring of its status.

To increase efficiency and to avoid unnecessary project delays, NRCS will address proposed, candidate and state special concern species as if they were listed when consulting on a proposed action.

### What is critical habitat?

Critical habitat includes the areas of land, water, and air required by an endangered or threatened species for normal needs and survival and has been formally designated and codified in federal law, either at listing or as a separate action. ESA only requires that Federal actions do not destroy or adversely modify designated critical habitat. Non-federal actions are not subject to this prohibition, but must comply with state requirements and not result in the take of listed species without a permit.

## What kinds of effects need to be considered?

Direct effects are caused by the action and occur at the same time and place.

Indirect effects are caused by the action but occur later in time or farther in distance but are still reasonably foreseeable.

Cumulative impacts are the impacts on the environment which result from the incremental impacts of the action when added to other past, present, and reasonably near future actions, regardless of what agency (federal or nonfederal) or person undertakes such actions.

## What species are threatened and endangered in Minnesota?

The current list of federal and state threatened, endangered, and special concern species, along with designated critical habitats, that may occur in Minnesota are in Section II of the Field Office Technical Guide (FOTG). The current Federal and state lists of threatened, endangered, and special concern species are displayed on the MN web page at:

***[www.mn.nrcs.usda.gov/ecs/wild/wild.html](http://www.mn.nrcs.usda.gov/ecs/wild/wild.html)***

## What is the Natural Heritage Database?

The MDNR Natural Heritage Database is a state listing of the observed and reported locations of Federal and state threatened, endangered, and special concern species. Each field office has been provided with, or has access to, the corresponding list of threatened and endangered species observations from this database. The county database is to be filed under code 190-14 "Endangered Species". ***The information in this database is not available to the public through NRCS.*** Any person inquiring about this or similar data should be directed to the following web site for data request information:

*[www.dnr.state.mn.us/ecological\\_services/nhnrp/](http://www.dnr.state.mn.us/ecological_services/nhnrp/)*

Not all of the available Federal information, such as critical habitat designations, will be found in the DNR Natural Heritage Database. Therefore, NRCS staff will need to look at both the natural heritage database and the USFWS web site.

## What are project and non project actions?

A project action is a formally planned undertaking that is carried out within a specified area by sponsors for the benefit of the general public. Project sponsors are units of government having legal authority and resources to install, operate, and/or maintain works of improvement. Examples include NRCS PL-566 Program, RC&D and River Basin Studies.

Nonproject actions include technical and/or financial assistance provided to an individual, group, or local unit of government, primarily through the local soil and water conservation district (SWCD). These actions may include consultations, advice, engineering, and other technical assistance that land users usually cannot accomplish themselves.

## What is the role of the district conservationist (DC)?

The DC provides technical assistance to clients, including units of government, to develop and implement resource plans on land they own or control. The DC is to examine the conservation district program and NRCS operations to evaluate their effects on threatened and endangered species and recommend to district officials and the state conservationist any action needed for their protection.

The DC should be acquainted with the listed species, candidate species, and state species of concern that may occur in the county, their habitats, and the sites within the county where these species have already been documented.

As an integral part of NRCS planning policy, an evaluation of social, cultural, economic, and environmental resources, including endangered species, will be made by NRCS when providing technical or financial assistance for non-project

and project actions (*see flowchart*). The first step is a review of resources on the action area, including the presence of any listed species or their habitat. The second step is to determine if any impacts may occur to these species or their critical habitat as a result of NRCS technical or financial assistance. Refer to the NRCS National Planning Procedures Handbook (NPPH), Part MN-600.45 for additional guidance on completing the environmental evaluation.

#### ***NON PROJECT ACTIONS:***

1. The NRCS field office will review the current MDNR Natural Heritage Database and USFWS web site to determine if there are known locations of threatened, endangered and special concern species or critical habitat in the vicinity, using form **NRCS-CPA-52 "Resource Concerns Inventory And Estimate of Environmental Impacts"**. The review will identify:

- All listed species or identified critical habitat within 1 mile of the proposed practice.

If no listed species or critical habitat is identified within 1 mile of the proposed practice, complete form NRCS-CPA-52 and proceed with practice application.

2. If the inventory identifies federal or state listed species or critical habitat in accordance with Step #1, NRCS will determine what effect the practice will have on the listed species or their habitat. **"May affect, (+) (-)"** or **"No-effect (0)"**.
  - A. If the practice is not listed in *Appendix 1*, the practice will result in a **"No-effect (0)"** determination on the listed species, document on the NRCS-CPA-52 and proceed with practice application.
  - B. If the practice is listed in *Appendix 1*, the practice will result in a **"May affect (-) or (+)"** determination. NRCS will advise the land user of the requirements of federal and state endangered species laws.

NRCS will obtain a concurrence letter from USFWS or DNR regarding the proposed practice affect. Refer to Appendices 2 and 3 for a listing of USFWS and MDNR regional contacts.

- (1) For **"not likely to adversely affect"** responses, document as such on the NRCS-CPA-52, provide a copy of the concurrence letter to the State Conservationist, and proceed with practice application.
- (2) **"Likely to adversely affect"**: DC's shall not approve any assistance resulting in a "likely to adversely affect" determination without written resolution by the State Conservationist. NRCS may at this point:
  - Recommend alternative conservation treatments that achieve **"no effect"** or **"not likely to adversely affect"** or,
  - At the request of the landowner, the State Conservationist may initiate formal consultation with USFWS or DNR or,
  - Terminate assistance.

#### ***PROJECT ACTIONS:***

A file will be developed by the Water Resources Section to address the formal or informal consultation done to review and evaluate effects on threatened and endangered species.

The state conservationist will initiate formal consultation when the environmental evaluation (EE) identifies NRCS project-type activities that may affect a listed species or their critical habitat. When the EE indicates that NRCS project-type activities will not affect listed species or their critical habitat, formal consultation generally will not apply and will not be initiated unless requested by USFWS or MNDNR.

#### **What is the role of the state conservationist if a listed species or its critical habitat may be affected?**

The state conservationist will make full use of informal consultation with the USFWS and

MDNR, not as a substitute for formal consultation, but as a vehicle to maintain constructive communication on all aspects of endangered species protection. Examples of activities considered informal consultation include requests for lists and/or proposed species that may be present in a planning area, and informal discussions on topics such as data needs, potential impacts, and alternatives.

It is the responsibility of the state conservationist to make the final decision regarding impacts to listed species after completing coordination and consultation with USFWS, MDNR and other species experts.

### **Where can NRCS employees learn more about the threatened, endangered, rare, and other special concern species in their work area?**

Minnesota listings of federal and state threatened, endangered and special concern species is included in Section II of the FOTG. Additional habitat information is available in the publication "Minnesota's Endangered Flora and Fauna" which was distributed to all NRCS offices in Minnesota for the office reference library.

County lists and fact sheets are available at [www.mn.nrcs.usda.gov/ecs/wild/wild.html](http://www.mn.nrcs.usda.gov/ecs/wild/wild.html).

### **What options exist for land users who have listed species, critical habitat, or proposed or candidate species on their land?**

In many cases, actions can be modified to avoid adverse effects to listed species. If adverse effects cannot be avoided, landowners may apply for incidental take permits.

#### FEDERAL PERMITS

Landowners may apply to USFWS for incidental take permits along with the development of a Habitat Conservation Plan or a Safe Harbor Agreement.

Habitat Conservation Plans that allow for incidental take during the development process.

To obtain the permit, the applicant must develop a Habitat Conservation Plan with USFWS. The plan is designed to offset any harmful effects the proposed activity might have on the species. These are available only to nonfederal entities.

Safe Harbor Agreements with assurances address the incentives for nonfederal landowners to manage their land for the benefit of listed species. Under these agreements nonfederal landowners are encouraged to maintain or enhance existing endangered species habitat, to restore listed species habitat, or to manage their land in a manner that benefits endangered species.

In return, USFWS provides assurances that future activities would not be subject to restrictions above those applicable to the property, at the time of enrollment in the program. Any endangered species occupying a landowner's property at the time of enrollment in the program would remain protected.

Similar agreements are available for candidate species.

#### STATE OF MINNESOTA PERMITS

Minnesota's endangered species law and associated rules impose a variety of restrictions, a permit program, and several exemptions pertaining to species designated as endangered or threatened.

The law and rules specify conditions under which the Commissioner of the Department of Natural Resources may issue permits to allow taking and possession of endangered or threatened species.

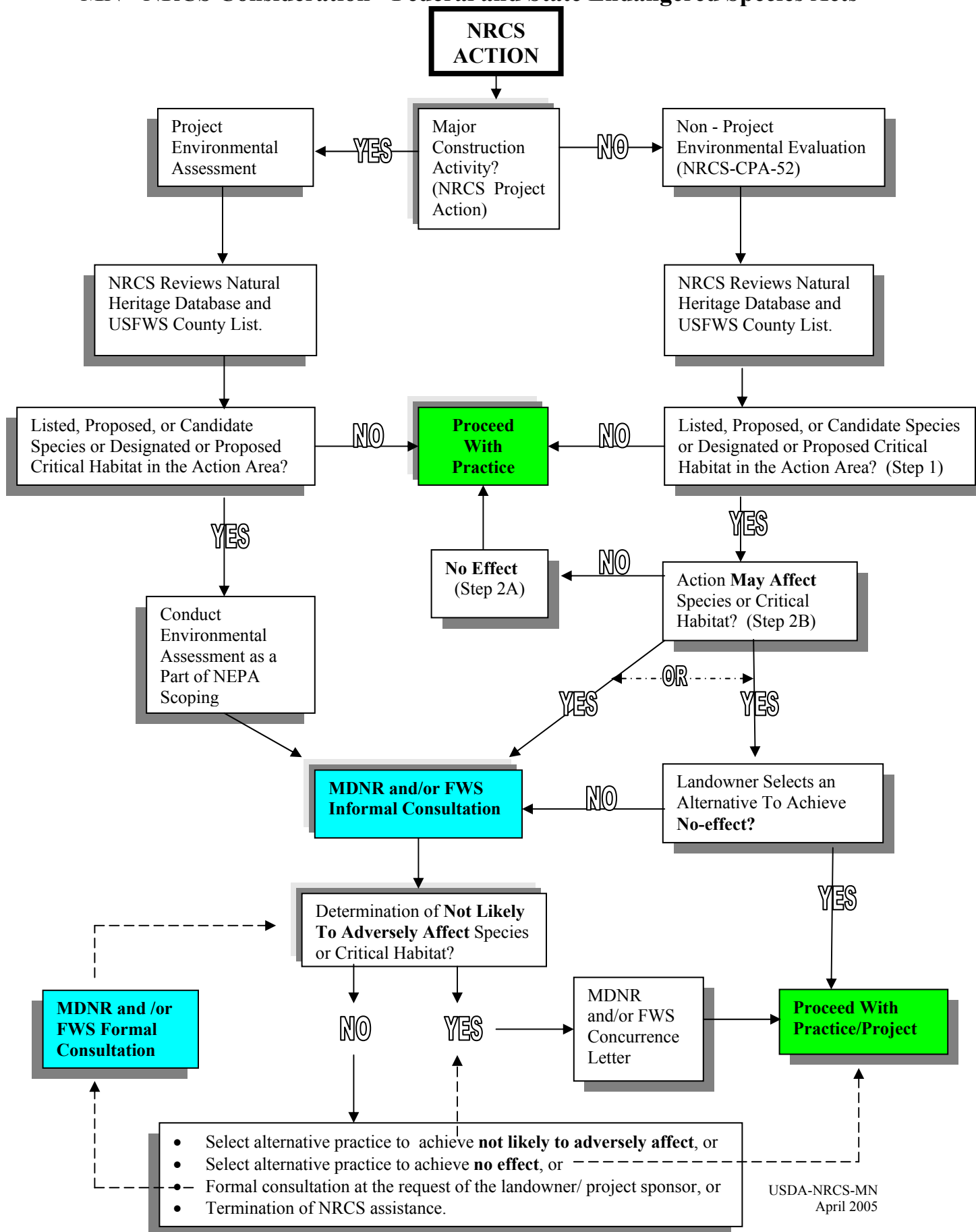
Permits may be issued for taking only under certain conditions:

- for scientific study,
- for educational programs,
- enhance propagation/ survival of the species,
- to prevent injury to people or property, or
- when the social and economic benefit of the taking outweigh the harm caused by it.

See the following MDNR web site for specific requirements:

[www.dnr.state.mn.us/ecological\\_services/nhnrp/endangerpermit.pdf](http://www.dnr.state.mn.us/ecological_services/nhnrp/endangerpermit.pdf).

## MN - NRCS Consideration - Federal and State Endangered Species Acts



# Appendix 1 - NRCS Practices Which "May Affect" Listed Species by Preferred Habitat.

CONSERVATION PRACTICE	ALL LISTED SPECIES OR CRITICAL HAB.	UPLAND - GRASSLAND	UPLAND - WOODLAND BRUHLAND	AQUATIC	WETLAND AND RIPARIAN	GRAY WOLF <sup>1/</sup> CRITICAL HAB.	TOPEKA <sup>2/</sup> SHINER CRITICAL HAB.	CANADA LYNX RANGE <sup>3/</sup>
Access Road	*							
Animal Trails and Walkways	*							
Brush Management	*							
Clearing and Snagging				*	*		*	
Dam, Floodwater Retarding	*							
Dam, Multi-Purpose	*							
Diversion (ft)				*			*	
Early Successional Habitat Dev./Mgt	*							
Firebreak		*	*		*			
Fish Stream Improvement				*	*		*	
Floodwater Diversion	*							
Floodway	*							
Forage Harvest Management		*	*		*			
Forest Site Preparation			*	*	*	*		*
Forest Stand Improvement			*	*	*	*		*
Forest Trails and Landings			*	*	*	*		*
Grade Stabilization Structure		*	*				*	
Grassed Waterway		*		*	*		*	
Grazing Land Mech. Treatment	*							
Hedgerow Planting		*						
Land Reconstruction, Abandoned Mined Land	*							
Land Reconstruction, Currently Mined Land	*							
Lined Waterway or Outlet	*							
Mine Shaft and Adit Closing	*							
Open Channel	*							
Pasture and Hayland Planting		*	*		*			
Pest Management		*	*	*	*			
Pond	*							
Prescribed Burning		*	*		*			
Prescribed Grazing		*	*		*		Riparian	
Pumping Plant for Water Control				*	*		*	
Range Seeding (Range Planting)		*	*		*			
Recreation Area Improvement	*							
Regulating Water in Drainage Systems				*	*		*	

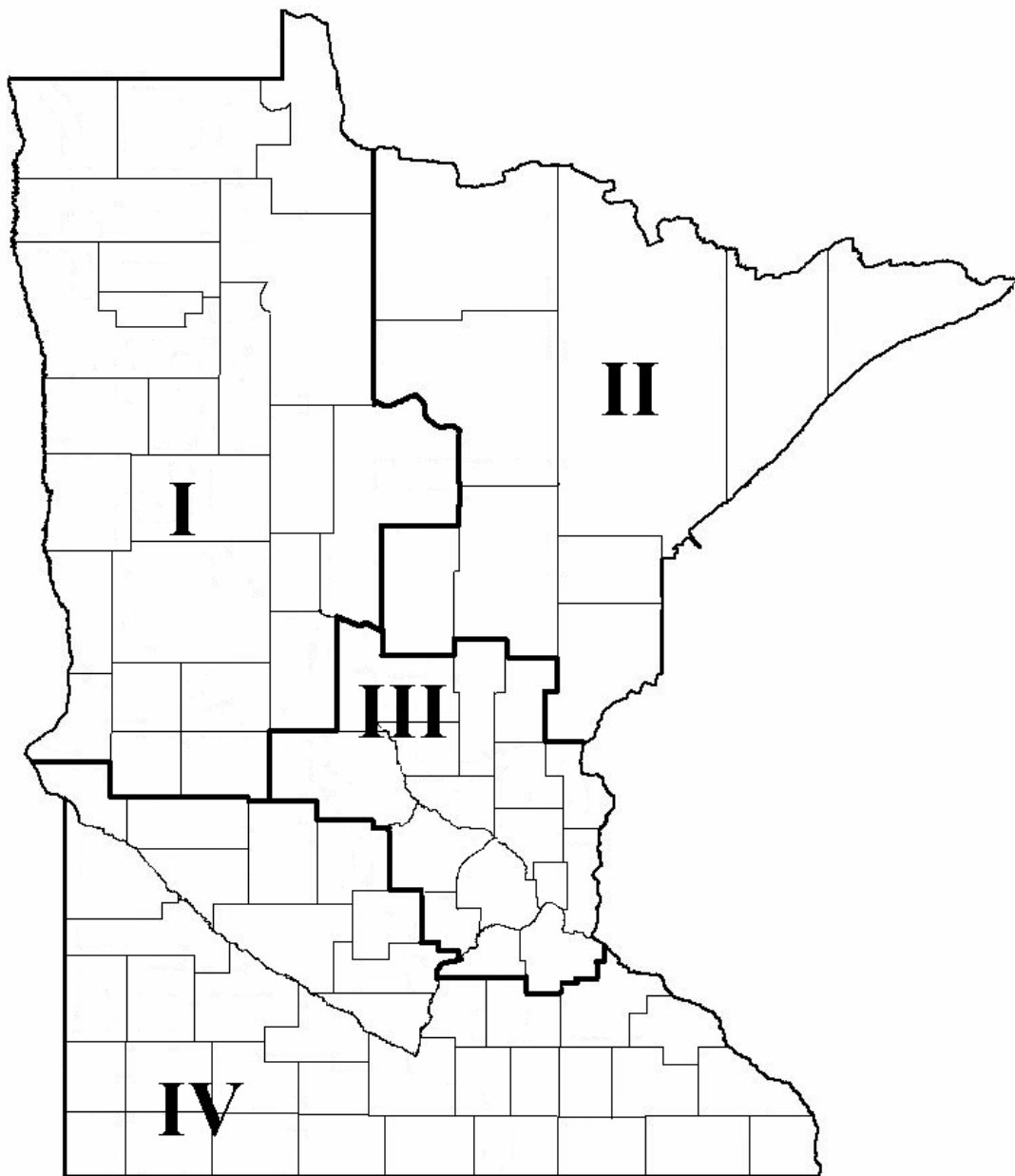
CONSERVATION PRACTICE (continued)	ALL LISTED SPECIES OR CRITICAL HABITAT	UPLAND - GRASSLAND	UPLAND - WOODLAND BRUHLAND	AQUATIC	WETLAND AND RIPARIAN	GRAY WOLF 1/ CRITICAL HABITAT	TOPEKA 2/ SHINER CRITICAL HABITAT	CANADA 3/ LYNX RANGE
Riparian Forest Buffer		*	*	*	*		*	
Riparian Herbaceous Cover		*	*	*	*		*	
Sinkhole Treatment		*	*		*			
Spring Development				*	*		*	
Stream Channel Stabilization				*	*		*	
Streambank and Shoreline Protection				*	*		*	
Subsurface Drain				*	*		*	
Surface Drainage; Field Ditch, Main or Lateral				*	*		*	
Tree Planting		*	*	*	*			
Upland Wildlife Habitat Management								
• Tree/shrub Planting		*	*		*			
• Forest Stand Improvement			*	*	*	*		
Waste Storage Facility or Treatment Lagoon		*	*	*	*		*	
Well				*	*		*	
Wetland Creation					*			
Wetland Enhancement					*			
Wetland Restoration					*			
Wildlife Wetland Habitat Management					*			
Windbreak/Shelterbelt Establishment		*	*		*			

**1/ See Appendix 4 for identified critical habitat.**

**2/ Identified stream segments occurring in all or part of Lincoln, Pipestone, Murray, Rock and Nobles Counties, see Appendix 5.**

**3/ See Appendix 6 for approximate county range map.**

## Appendix 2 - MDNR informal consultation contacts.



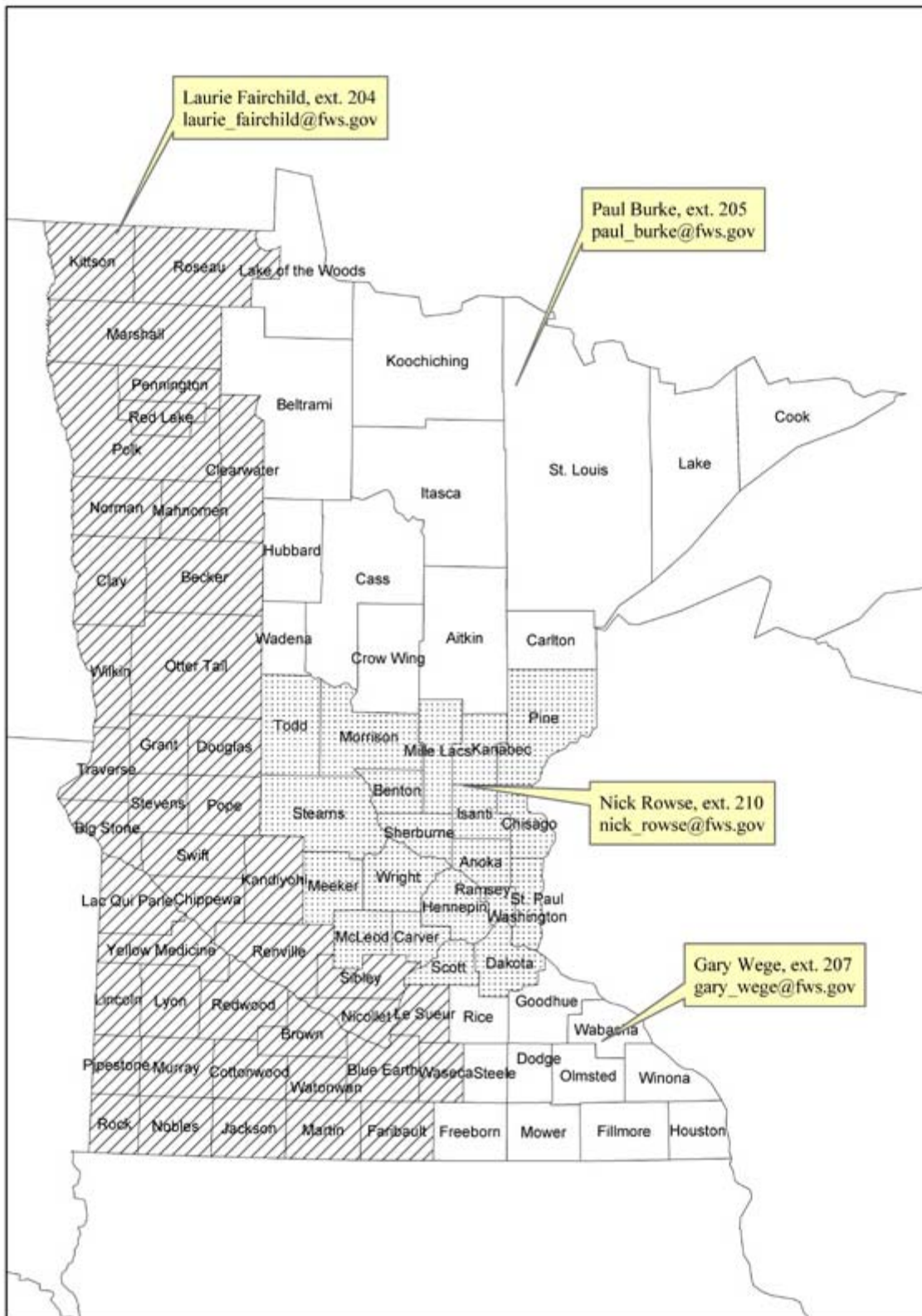
**I**      **Regional Non-game Specialist**  
**2115 Birchmont Beach Rd. NE**  
**Bemidji, MN 56601**  
**(218) 755-2976**

**II**      **Regional Non-game Specialist**  
**1201 E. Hwy 2**  
**Grand Rapids, MN 55744**  
**(218) 327-4518**

**III**      **Regional Non-game Specialist**  
**1200 Warner Road**  
**St. Paul, MN 55106**  
**(651) 297-2277**

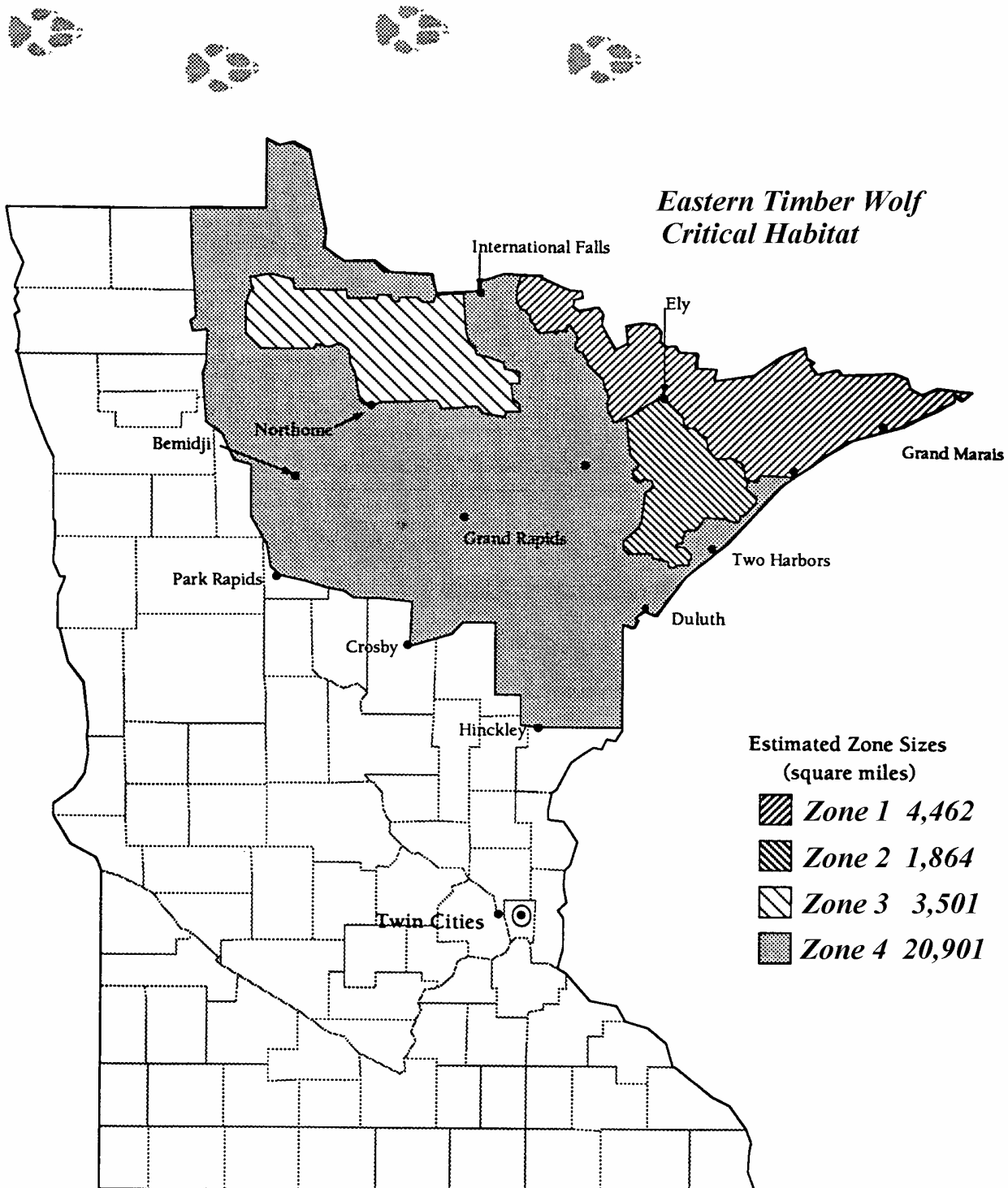
**IV**      **Regional Non-game Specialist**  
**261 Hwy 15 So.**  
**New Ulm, MN 56073**  
**(507) 359-6033**

### Appendix 3 - US Fish and Wildlife Service informal consultation contacts.



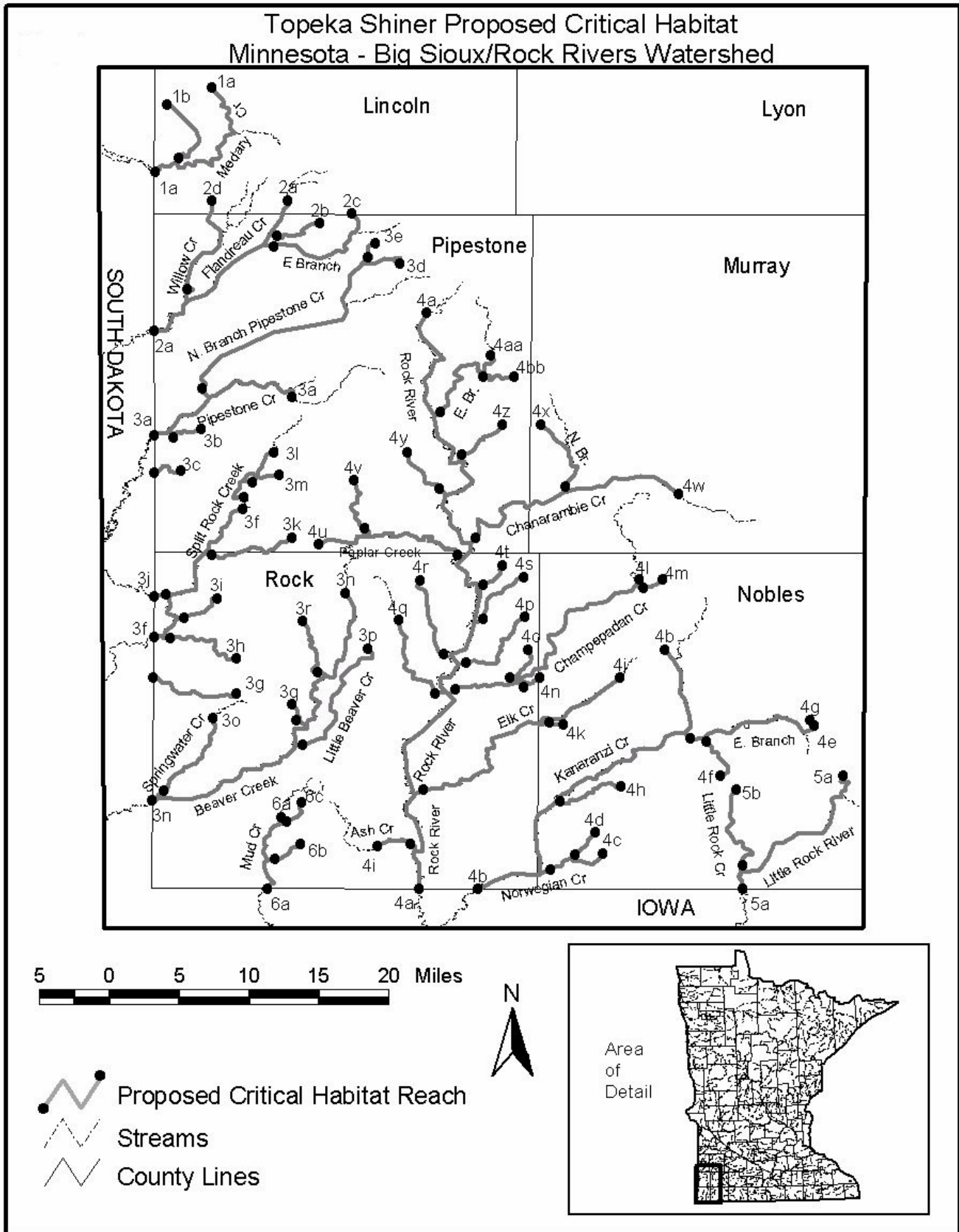
U.S. Fish and Wildlife Service, Twin Cities Field Office -- Habitat Conservation Biologists for Minnesota and their geographic areas by county. To reach by phone, call (612)725-3548 and dial extension.

## Appendix 4 - Gray Wolf Critical Habitat.



**Current Wolf Management Zones**

## Appendix 5 - Topeka Shiner Proposed Critical Habitat.



## Appendix 6 – Canada Lynx Range by counties.

Aitkin, Beltrami, Carlton, Cass, Clearwater, Cook, Itasca, Koochiching, Lake, Lake of the Woods, Marshall, Roseau and St. Louis.

### Minnesota Lynx Sighting Records

March 2000 - September 9, 2003

